IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

MFA.No. 234 of 2001()

OPMV.3133/1993 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI

APPELLANT: RESPONDENT NO.2:

DISTRICT INSURANCE OFFICER,
KERALA STATE INSURANCE DEPARTMENT,
KOZHIKODE.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU

RESPONDENTS: APPLICANT & RESPONDENT NO.1:
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1. M.K.MOOSAKUTTY, S/O.AHAMMED,
KIZHAKKEYIL HOUSE, CHUNGAPALLY
POST EAST VAZHAYOOR, MALAPPURAM DISTRICT.

2. K.P.ALI, S/O.USSIAN HAJI,
KALLIKOTTAM PARAYIL HOUSE,
POST PADANILAM, ARAMBRAM
KOZHIKODE DISTRICT.

R1 BY ADV. SRI.K.P.MUJEEB
R2 BY ADV. SRI.SUNNY MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON 24/1/2007 DELIVERED THE FOLLOWING:

C.M.P.NO.6022/2001 IN M.F.A.NO.234/2001

DISMISSED

24/1/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

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K.T. SANKARAN, J.

M.F.A.NO. 234 OF 2001 A

Dated this the 24th day of January,2007

JUDGMENT

The point involved in this appeal is whether the river bank from where taking of sand is prohibited is a 'public place' within the meaning of Section 2(34) of the Motor Vehicles Act, 1988.

2. The petitioner before the Motor Accidents Claims Tribunal was the owner of a country boat. The boat was tied at the river bank of Chaliyar river at a ferry at Perinkadavu on 28.8.1993. At about 12 noon on that day, lorry bearing Registration No.KL-11/A-2579, owned and driven by the first respondent in the claim petition, hit on the boat and damage was caused to the boat. It is alleged that the boat was damaged completely. The allegation is that the first respondent drove the vehicle in a rash and negligent manner in high speed and suddenly reversed the lorry and in that process the lorry hit on the boat. The second respondent is the insurer of the lorry. A sum

of Rs.90,033/- was claimed as compensation.

3. The first respondent did not file any written statement. The second respondent – insurer – contended in the written statement, inter alia, as follows: The permit for running the vehicle is given for plying in all fit roads of Kerala. The approach road to the river bank where the accident occurred is `Kutcha' road and as such it is not a fit road. The road in question is not a public place or a public road. There is violation of the policy condition. As per G.O.(P) 132/93 LAD dated 29.6.1993, removal of sand from Chaliyar river is prohibited. The lorry and the boat were engaged in transporting sand which was illegal and unauthorised. The lorry was engaged in unlawful transportation of sand in a private place and this is a violation of the policy condition. The insurer, Kerala State Insurance Department, has no liability to pay compensation.

4. Before the Tribunal, the petitioner was

examined as PW1 and another witness was examined as PW2. The Tribunal held that the accident occurred due to the rash and negligent driving of the lorry by the first respondent in the claim petition. It was held that the petitioner is entitled to get Rs.75,000/- as compensation for the damage caused to the country boat. The Tribunal rejected the contention raised by the insurer that the place where the accident occurred is not a public place. The insurer was made liable to pay the amount as per the award passed by the Tribunal. In this Appeal, the insurer challenges the award passed by the Tribunal.

5. Section 2(34) of the Motor Vehicles Act, 1988 reads thus:

> "(34) "**Public place**" means a road, street, way, or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

The corresponding provision in the Motor Vehicles Act, 1939 was Section 2(24) which contained the same

definition of "public place". Section 147 (1)(b)(i)of the Motor Vehicles Act, 1988, reads thus:

> "**147. Requirements of policies and limits of liabilities**:-- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which --
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;"

The corresponding provision in the Motor Vehicles Act, 1939 was Section 95(1). The contention of the insurer is that river bank and the road leading to the river bank are not public places. I am of the view that this contention is unsustainable in view of the definition of `public place' in the Motor Vehicles Act. To constitute a public place, the place need not be a motorable road or a public road. What is mentioned in

Section 2(34) is only a `road'. It could be a `street or 'way' or 'other place' as defined in Section 2(34). The definition of `public place' also makes it clear that it does not matter whether the place is a thoroughfare or not. The condition which is necessary to constitute a `public place' is that the public must have a right of access. Though there was prohibition of taking sand from Chaliyar river at the relevant time, it cannot be said that the public had no access to the river bank of Chaliyar. There is also no case for the insurer that country boat could not be stationed at the ferry at the river bank. There was no prohibition for the public to enter into the river bank and there was no prohibition of taking country boats. The prohibition was only regarding taking of sand from the river and river bank. Whether the road is a 'Kutcha' road or a 'pucca' road is also not relevant at all. 'Kutcha' road is also a 'road' within the meaning of Section 2 (34) of the Act. The contention of the insurer that it was not a 'fit road' is also unsustainable. There is no requirement of the road

being a 'fit road' under Section 2 (34) of the Act.

6. In **United India Insurance Co. Ltd.** v. **Lakshmi** (1997(1) KLT 449), a Division Bench of this Court considered the question whether the expression `public place' within the meaning of Section 2(24) of the Motor Vehicles Act includes private properties where the members of the public have an access and it was held that it would, holding thus:

> "There is nothing in evidence available in this case to the effect that there were restrictions or regulations on the exercise of right of access by the members of the public to the property in question. In the absence of such restriction or regulation, it cannot be said that the right of entry to the paddy filed was restricted."

In **Chacko** v. **Mariakutty and others** (1987 ACJ 557), a Division Bench of this Court considered the question whether a quarry in a private property is a public place within the meaning of Section 2(24) and Section 95(1) of the Motor Vehicles Act, 1939. Holding that the quarry is a public place, it was held thus:

> "To us, it appears, that the public place is a place to which nobody can deny as a matter of right access to the others, or nobody had, as a matter of fact, at the relevant time, or immediately prior thereto, sought to exercise the right of denial of access to the others. It is significant that the definition of `public place' in section 2(24) of the Motor Vehicles Act mentions that, even if the place is not a thoroughfare, it may still be a public place, provided the public have got right of access thereto. .."

In **Pandurang Chimaji Agale and another** v. **New India Life Insurance Co. Ltd. Pune and others** (1988 ACJ 674), a Full Bench of the Bombay High Court considered the question whether accident on a private road in the compound of an industrial establishment where hundreds of visitors besides the employees visit daily in various modes of conveyance would constitute a public place within the meaning of Section 2(24) of the Motor Vehicles Act, 1939. Holding in the affirmative, the Full Bench held:

> "The definition of `public place' under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by

> tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose. .....
>
> The Legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It, will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of `public place' in section 2(24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act."

7. For the aforesaid reasons, I hold that the place where the accident occurred is a public place within the meaning of Section 2(34) of the Motor Vehicles Act, 1988 and reject the contention of the appellant – insurer.

8. It has come out in evidence that the accident occurred while the owner-cum-driver of the lorry was

taking sand from Chaliyar river. Ext.B1 report submitted by the Surveyor appointed by the insurer mentions about the Government Order dated 29.6.1993, whereby removal of sand from nine rivers including Chaliyar river was prohibited. The policy is not marked in evidence. No evidence was adduced by the insurer before the Tribunal. The contention of the insurer is that even if the insurer is made liable to pay the amount initially, since the policy conditions have been violated, the insurer is entitled to recover the amount from the first respondent, owner-cum-driver of the lorry. It is clear from the evidence of PW1 that the lorry was taken to the river bank and sand was loaded in the lorry. PW1 also stated that there was ban on taking sand from Chaliyar river at the relevant time. The learned counsel for the owner-cum-driver contended that the petitioner is not entitled to get any amount as compensation as his country boat was also involved in loading sand. In the cross examination of PW1, there is no suggestion to that effect. It is true that PW2 stated in cross examination that the boat was

being hired for taking sand and that the boat was not being used for taking persons to the other side of the river. It is not stated by PW2 that on the date of accident, the boat was engaged in illegal activities. In the facts and circumstances of the case and the evidence on record, it cannot be held that the petitioner is not entitled to compensation. The finding of the Tribunal that the petitioner is entitled to get compensation is confirmed. The learned counsel for the appellant submitted that even if the insurer is made liable to pay compensation, in the facts and circumstances of the case and in view of the fact that the lorry was used for illegal transportation of sand, the insurer is entitled to recover the amount from the owner of the vehicle, namely, the insured. He relied on the decision in **National Insurance Co. Ltd.** v. **Swaran Singh** (2004 (1) KLT 781 (SC)). All the necessary facts to decide the question have not been brought out in evidence and the relevant documents have not been marked in evidence. In the facts and circumstances of the case, I am inclined to direct the

Tribunal to consider this question and decide whether the insurer is entitled to recover the amount from the insured.

In the result, the Miscellaneous First Appeal is allowed in part and the matter is remanded to the Tribunal for the limited purpose of deciding the question whether the insurer is entitled to recover from the insured the amount paid by it to the petitioner. The Tribunal shall consider the contentions mentioned above and permit the parties to adduce evidence touching upon this point. In all other respects, the award passed by the Tribunal is confirmed.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.F.A.NO. 234 OF 2001 A

JUDGMENT

24th January, 2007